

November 1, 2011

Tony Mendoza  
Assemblymember 56<sup>th</sup> District  
State Capitol  
P O Box 942849  
Sacramento, CA 94249-0056

Re: Your Request for Advice  
**Our file No. A-11-180**

Dear Assemblymember Mendoza:

This letter responds to your request for advice regarding the provisions of the Political Reform Act (the “Act”)<sup>1</sup> and is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

### **QUESTION**

May you solicit space from the owner of a billboard company for a billboard that will contain your name and picture as well as a message asking people to register to vote?

### **CONCLUSION**

The Act does not prohibit you from soliciting a payment for a billboard asking people to register to vote, and the payment for the billboard, which you have described, does not constitute a contribution under the Act. Nonetheless, the payment must be reported as a behested payment if payments made by the source at your behest aggregate to \$5,000 or more in the calendar year.

### **FACTS**

You have solicited and been offered billboard space from the owner of a company that owns and rents billboards for public advertisements, Bulletin Displays, LLC. As planned, you would like to use the billboard to issue a public service announcement asking people to register

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

to vote. While the billboard will feature your name and photograph, the text of billboard will be limited to a statement asking people to register to vote.

### ANALYSIS

A “contribution” is defined as “a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes.”<sup>2</sup> Where a payment is made at the behest<sup>3</sup> of a candidate, the payment is a contribution unless (1) “full and adequate consideration is received from the candidate,” and (2) “it is clear from the surrounding circumstances that the payment was made for purposes unrelated to his or her candidacy for elective office.” (Section 80215(b)(2).)

“The following types of payments are presumed to be for purposes unrelated to a candidate’s candidacy for elective office:

“(i) A payment made principally for personal purposes, in which case it may be considered a gift under the provisions of Section 82028. Payments that are otherwise subject to the limits of Section 86203 are presumed to be principally for personal purposes.

“(ii) A payment made by a state, local, or federal governmental agency or by a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

“(iii) A payment not covered by clause (i), made principally for legislative, governmental, or charitable purposes, in which case it is neither a gift nor a contribution. However, payments of this type that are made at the behest of a candidate who is an elected officer shall be reported within 30 days following the date on which the payment or payments equal or exceed five thousand dollars (\$5,000) in the aggregate from the same source in the same calendar year in which they are made.” (Section 80215(b)(2)(B).)

In addition, the term “contribution” does not include “[a]n expenditure made at the behest of a candidate in connection with a communication directed to voters or potential voters as part of voter registration activities or activities encouraging or assisting persons to vote, if the expenditure does not constitute express advocacy.” (Regulation 18215(c)(1).)

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<sup>2</sup> A “payment” is any “payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible. (Section 82044.)

<sup>3</sup> A payment is “made at the behest” of a candidate if the payment is “made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of” the candidate. (Regulation 18225.7(a).)

Turning to your question, a payment for a billboard made at your behest which will ask people to register to vote is not a contribution so long as the billboard does not contain express advocacy. Pursuant to Regulation 18225(b)(2):

“A communication ‘expressly advocates’ the nomination, election or defeat of a candidate or the qualification, passage or defeat of a measure if it contains express words of advocacy such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot,’ ‘vote against,’ ‘defeat,’ ‘reject,’ ‘sign petitions for’ or, within 60 days prior to an election in which the candidate or measure appears on the ballot, the communication otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election.”

Based upon your description, the billboard will not contain any words of express advocacy. While the billboard will identify you and contain a large photograph of you, these references alone on a single billboard do not constitute express advocacy. Thus, the payment for the billboard is not a contribution under the Act.

While the payment for the billboard is not a contribution under the Act, the payment for the billboard will be made at your behest for a legislative, governmental, or charitable purpose that is not otherwise a gift. Pursuant to Section 82015(b)(2)(B)(iii), the payment must be reported on a behested payment report (see Commission Form 803) if payments made by the same source at your behest aggregate to \$5,000 or more in the calendar year.<sup>4</sup>

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Brian G. Lau  
Counsel, Legal Division

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<sup>4</sup> Note that the general rule for reporting the payment for the billboard is to report the fair market value of the payment. Under Section 82025.5, “[w]hen the amount of goods, services, facilities, or anything of value other than money is required to be reported under this title, the amount reported shall be the fair market value, and a description of the goods, services, facilities, or other thing of value shall be appended to the report or statement.”